

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION       §  
OF PETER KOSTYSHYN FOR A           § No. 468, 2011  
WRIT OF MANDAMUS                   §

Submitted: October 7, 2011  
Decided: November 10, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 10<sup>th</sup> day of November 2011, upon consideration of the petition of Peter Kostyshyn for an extraordinary writ of mandamus and the State's response thereto, it appears to the Court that:

(1) The petitioner, Peter Kostyshyn, seeks to invoke the original jurisdiction of this Court, pursuant to Supreme Court Rule 43, to issue a writ of mandamus to the Court of Chancery directing that court to reopen an estate matter, which was the subject of significant prior litigation and was closed in 2003. The final accounting in the matter was approved by the Court of Chancery in 2004. The State of Delaware has filed a motion to dismiss Kostyshyn's current petition on the ground that it fails to invoke this Court's original jurisdiction. We agree.

(2) A writ of mandamus will only be issued if a complainant can establish that: he has a clear right to the performance of a duty; that no other

adequate remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.<sup>1</sup> In this case, Kostyshyn cannot show that he has a right to reopen a case that has been closed for nearly eight years, nor can he establish that the Court of Chancery has arbitrarily refused to perform a duty owed to him.

NOW, THEREFORE, IT IS ORDERED that the petition for the issuance of an extraordinary writ is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>1</sup>*In re Bordley*, 545 A.2d 619, 620 (Del. 1988).